

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 13-15, 23, 24, 26-29, 39-42, 44-46, 48-57, 59, 70-102, and 111 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. This new rejection is in view of the Interim Guidelines published on November 2005, incorporated into MPEP 2106 and views presented by the PTO on subject matter eligibility of process claims to the Court of Appeals for the Federal Circuit in *In re Bilski*, Appeal No. 2007-1130. Based on Supreme Court precedent and recent Federal Circuit decisions, a § 101 process must be tied to another statutory class (such as an apparatus) and must positively recite the subject matter that is being transformed by identifying the material that is being changed to a different state.

Therefore claims 13-15, 23, 24, 26-29, 39-42, 44-46, 48-57, 59, 70-102, and 111 must positively recite the apparatus elements necessary to carry out the method steps and must also positively include the subject matter this is being transformed to a different state or the end result being accomplished. The transformation of data and the image processing steps is not tied to another statutory class and does not result in the transformation to a different state.

Claim Objections

2. Claim 27 is objected to because of the following informalities: Claim 27 is dependent on claims 13, 16, or 18 and claims 13 and 16 have has been cancelled. Appropriate correction is required.
3. Claim 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 32 is dependent upon itself.
4. Claim 79 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 78 and 79 recite the same elements.

Allowable Subject Matter

5. The following is a statement of reasons for the indication of allowable subject matter: Claims 1, 3-6, 8-12, 30, 32-38, 60-67, 69, and 103-110 are allowed.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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7. Claim 13 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 7,149,564 in view of Rogers' 157 (previously cited as a provisional double patenting rejection in office action dated 5/17/05, now issued). Claim 8 teaches all the elements of current claim 13 except for refining the wireframe model by adjusting the coordinates of the vertices to more accurately represent the region of interest. In the same field of endeavor, Rogers et al.'157 teach the use of the region growing process in order to more accurately represent the abnormality (see col. 6, lines 24-49). It would have been obvious to one skilled in the art at the time that the invention was made to have modified claim 8 to incorporate the increased accuracy of the abnormality via use of adjusting the coordinates of vertices by using the region growing process in order to increase the accuracy of diagnosis of abnormalities.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAISAKHI ROY whose telephone number is (571)272-7139. The examiner can normally be reached on M-F (7:30 a.m. - 4p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN CASLER/
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